

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



May 5, 1989

ALL COUNTY LETTER NO. 89-39

To: ALL COUNTY WELFARE DIRECTORS  
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES  
ALL SDSS ADOPTIONS DISTRICT OFFICES  
ALL STATE SUPERIOR COURTS

SUBJECT: REIMBURSEMENT OF NONRECURRING ADOPTION EXPENSES

BACKGROUND

As a condition of California's continued eligibility to receive federal Title IV-E funding, the Department of Health and Human Services (DHHS) is requiring the state to make payments for nonrecurring adoption expenses incurred by or on behalf of adopting parents in connection with the adoption of special needs children. Pending enactment of state implementing statutes and regulations, this letter provides information regarding these new requirements and describes interim actions adoption agencies must take to ensure California's compliance.

Effective January 1, 1987, the Tax Reform Act of 1986 (P.L. 99-514) repealed Section 222 of the Internal Revenue Code (IRC), which had permitted an itemized deduction for expenses incurred in the legal adoption of a child with special needs who was eligible for adoption assistance pursuant to Title IV-E of the Social Security Act. As an alternative to the repealed Section 222 of the IRC, the Tax Reform Act of 1986 amended Title IV-E to require states to provide for the direct reimbursement of these expenses.

The final federal rules which implement the Nonrecurring Adoption Expenses Reimbursement Program (Federal Register, Volume 53, Number 240) were effective December 14, 1988 and require the reimbursement, within limits determined by the state, of the nonrecurring expenses incurred by or on behalf of parents who adopt a special needs child. (The term "child with special needs" is defined at 45 CFR 1356.41(d) and Welfare and Institutions Code Section 16116. This is the same definition which applies for the existing Adoption Assistance Program.)

Nonrecurring adoption expenses include reasonable and necessary adoption fees, court costs, attorney fees, and other expenses directly related to the legal adoption of a child with special needs, which have not been reimbursed from other sources or other funds. These would include costs of the adoption incurred by or on behalf of the parents and for which parents carry the ultimate liability for payment such as the homestudy, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or adoptive parents when necessary to complete the adoption process.

In cases where siblings are placed for adoption, either separately or as a unit, each child is treated as an individual with a separate reimbursement, up to the maximum amount allowable for each child.

When the adoption of a special needs child involves interstate placement, the State that enters into an adoption assistance agreement under a State subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is interstate placement but no agreement for adoption assistance, the State in which the final adoption decree is issued will be responsible for reimbursement of the nonrecurring adoption expenses.

It is planned that, as in the Adoption Assistance Program currently, adoption agencies will negotiate and sign the agreement with the adopting family for reimbursement of nonrecurring adoption expenses. The signed agreements will then be forwarded for payment to the County Welfare Department in the county in which the adoption is finalized by the court. Costs of the Nonrecurring Adoption Expense Reimbursement Program will be funded by the State and Federal governments.

The State Department of Social Services (SDSS) is sponsoring legislation (SB 625 - Royce) which would enact state statute to authorize the payment of these expenses. The proposed legislation sets a reimbursement maximum of \$500.00 for each special needs placement, which is the estimated value of an income tax deduction which would have been realized under the former federal tax deduction benefit by a California family of four earning a median income.

REQUIRED ACTION

To ensure California's continued eligibility for federal Title IV-E funding, the following interim procedures must be established pending enactment of state statute and regulations:

- 1) **Effective immediately, adoption agencies must inform all persons at the time application for adoption of a special needs child is made of the availability of this reimbursement, subject to enactment of state enabling legislation;**
- 2) **Effective June 14, 1989, a condition of eligibility is that an agreement for reimbursement (subject to statutory authorization) must be signed by all adoptive parents of special needs children and the adoption agency prior to the final decree of adoption. This agreement is required whether or not the adoptive parents are receiving or are applying for Adoption Assistance Program payments. This requirement will necessitate identification by agencies of all pending adoptions which are likely to be finalized on or after June 14, 1989 to ensure that agreements for reimbursement of nonrecurring adoption expenses are signed before finalization.**
- 3) To be eligible for payment, agreements for reimbursement (subject to statutory authorization) must be signed by all adoptive parents of special needs children whose final decrees of adoption were entered into on or after January 1, 1987 and before June 14, 1989, or whose final decrees were entered into before January 1, 1987 but nonrecurring adoptions expenses were paid by the adoptive parents after January 1, 1987. This population of adoptive parents must also be notified by adoption agencies of the reimbursement program, and to be eligible for reimbursement, they must sign their agreements and file claims no later than December 13, 1990.
- 4) Adoption agencies must keep accurate records of the written agreements in order to ensure payment to eligible adoptive parents.

The written agreement may be a separate document or added to the Adoption Assistance Agreement (AD 4320). Wording of the agreement must read as follows:

" \_\_\_\_\_ agrees to submit to \_\_\_\_\_  
 (Name of Adoption Agency) (County Welfare  
 \_\_\_\_\_ a claim to reimburse \_\_\_\_\_  
 Department) (Adoptive Parent(s) Name(s))  
 for allowable nonrecurring adoption expenses up to the amount  
 authorized by state statute.

I/we understand that nonrecurring adoption expenses (subject to state authorizing statute) include reasonable and necessary adoption fees and other expenses which are directly related to the legal adoption of a child with special needs. These would include costs of the adoption incurred by or behalf of the parents and for which parents carry the ultimate liability for payment such as the homestudy, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or adoptive parents when necessary to complete the adoption process.

I/we understand that all expenses claimed must be documented with receipts or letters confirming the expenses and have not been previously or subsequently reimbursed from other sources.

I/we understand that we will not receive reimbursement for these expenses until a state statute is enacted to authorize payment. The state statute may not be enacted until after 1991.

I/we understand that there is proposed federal legislation which, if enacted, would reinstate the income tax deduction for all adoptive parents of special needs children whose final decrees of adoption were entered into on or after January 1, 1987 and before June 14, 1989, or whose final decrees were entered into before January 1, 1987 but nonrecurring adoptions expenses were paid by the adoptive parents after January 1, 1987. In this situation, I/we may recoup my/our nonrecurring adoptions expenses by filing an amended income tax return for the appropriate tax year.

The following sections are to be completed only if applicable:

I/we choose not to file a claim for nonrecurring adoption expenses with \_\_\_\_\_.  
(Name of Adoption Agency)

I/we are not eligible to receive reimbursement of nonrecurring adoption expenses because we have already received reimbursement for these expenses from \_\_\_\_\_.  
(Name of Reimbursement Source)

\_\_\_\_\_  
(Name(s) of Adoptive Parent)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name of Agency Representative)

\_\_\_\_\_  
(Date) "

Funds expended by public adoption agencies with respect to nonrecurring adoption expenses may be claimed as an administrative expense of the Title IV-E Adoption Assistance Program. Funds expended by private adoption agencies to implement this federal requirement will be reimbursed as allowable costs pursuant to the Private Adoption Agency Reimbursement Program.

If you have any questions or concerns, please contact the Adoptions Policy Bureau at (916) 322-4228 (ATSS 492-4228).

  
LOREN D. SUTER  
Deputy Director

cc: CWDA